THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TAX REVISION CASE No.54 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This revision, under Section 22 (1) of the Andhra Pradesh General Sales Tax Act, 1957 (for brevity, 'the Act'), is preferred against the order passed by the A.P.VAT Appellate Tribunal, Visakhapatnam in T.A.No.14 of 2009 dated 15.05.2015.

The appeal before the Tribunal was preferred by the dealer against the order of the Appellate Deputy Commissioner (CT), Guntur dated 13.08.2008 rejecting the petitioner's appeal at the admission stage for non-production of proof of payment of 12.5 % of the disputed tax.

The facts, as noted in the order of the Tribunal, are that the dealer preferred an appeal to the Appellate Deputy Commissioner, aggrieved by the assessment order dated 12.02.2008; the Appellate Deputy Commissioner took an objection, to the registration of the appeal, on the ground that the appellant did not produce proof of payment of 12.5% of the disputed tax as required under the second proviso to Section 19 (1) of the Act; he issued a notice asking the appellant to comply with the objection; aggrieved thereby the petitioner invoked the writ jurisdiction of this Court; this Court directed the appellant to make payment of 50% of the disputed tax; the appellant paid 50% of the disputed tax vide challan No.000433 dated 11.08.2008 as per the directions of this Court; this fact was not taken into account by the Appellate Deputy Commissioner; the payment made by the dealer on 11.08.2008 was two days prior to 13.08.2008 when the Appellate Deputy Commissioner rejected the appeal; and, as the assessee had paid 50% of the tax on 11.08.2008 as directed by this Court even before the order was passed by the Appellate Deputy

Commissioner on 30.08.2008, the impugned order of the Appellate Deputy Commissioner was liable to be set aside. The Tribunal allowed the appeal.

While the second proviso to Section 19 (1) of the Act required the appellant to produce proof of payment of 12.5% of the disputed tax for an appeal to be entertained, it does appear, from the facts as noted hereinabove, that, pursuant to the orders passed by this Court, the respondent-dealer had deposited 50% of the disputed tax which is far more than the pre-deposit requirement of 12.5% of the disputed tax.

Sri Sk.Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, had contended earlier that the order does not refer even to the writ petition number, and that he be granted time to verify whether or not such a Writ Petition was filed. Consequently, hearing of the TREVC was adjourned, periodically from 25.01.2016 onwards, to enable him to verify whether or not such an order was passed by this Court. Despite ten adjournments having been granted for the past 2½ months, Sri Sk.Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, still expresses ignorance of the writ petition number. As the facts stated in the order of the Tribunal must, ordinarily, be presumed to be true and correct, we see no reason to take a view different from that of the Tribunal, more so when the learned Special Standing Counsel is unable to show anything to the contrary.

As the dealer must be presumed to have paid 50% of the disputed tax, in compliance with the order of this Court dated 11.08.2008, and as such deposit is far more than the requirement of pre-deposit of 12.5% of the disputed tax, under Section 19 (1) of the Act, the order under revision does not suffer from any illegality necessitating interference in revision proceedings under Section 22 (1) of the Act.

The revision fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

14th March,2016

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